

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 1871/2017**

**Judgment reserved on 24.12.2019.**

**Decided on: 1.1.2020**

---

Hem Raj

.....Petitioner.

Versus

State of HP and others

.....Respondents.

---

*Coram*

**The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice.**

**The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**

*Whether approved for reporting?*

---

For the petitioner: Mr. Rajnish Maniktala, Senior Advocate, with Mr. Naresh Verma, Advocate.

For the respondents: Mr. Ashok Sharma, Advocate General with M/s J. K. Verma, Adarsh Sharma and Ritta Goswami, Additional Advocates General and Mr. Rajat Chauhan, Law Officer, for respondent No.1.

Mr. D.K. Khanna and Mr. Deven Khanna, Advocates, for respondent No. 2.

Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for respondent No.3.

---

**L. Narayana Swamy, Chief Justice.**

The petitioner, by the medium of this petition, challenges the order of appointment of respondent No. 3 as a

Member of Himachal Pradesh Public Service Commission dated 5.5.2017 with a further prayer to direct the respondent/State to frame guidelines and parameters for appointment of Chairman and Members of the Himachal Pradesh Public Service Commission (hereinafter referred to as 'the Commission').

2. It is stated that the petitioner being a law student, went through the constitutional provisions pertaining to the appointment of Chairman and Members of the Commission and also the judgments rendered by the Hon'ble Supreme Court of India in this regard. The petitioner accordingly, applied for information under the Right to Information Act, 2005 and was shocked to see that the constitutional provisions as well as law laid down by the Hon'ble Supreme Court has been violated while making selection and appointment of respondent No. 3 as a Member of the Commission. It is submitted that respondent No. 3 does not fulfil requisite constitutional requirement for being appointed as Member of the Commission.

3. To substantiate his stand, the learned Senior Counsel for the petitioner refers to the constitutional provisions, i.e., Article 316, relating to appointment and terms of office of Member; Article 317, the removal and suspension of a Member of a Commission; Article 318 which empowers the State Government to determine number of members of the Commission and their conditions of service; Article 319 which contains the prohibition as to holding of office by the Members of Commission on seizing of such Member; and Article 320, which lays down functions of Commissions. The petitioner has also referred to law settled by the Supreme Court in (1985) 4 SCC 417, (2000) 4 SCC 309, (2006) 11 SCC 356, (2009) 5 SCC 65, (2010) 13 SCC 586 and (2013) 5 SCC 1.

4. In this background it has been averred in the petition that the Additional Chief Secretary (Personnel) placed the matter before the Hon'ble Chief Minister, Himachal Pradesh for taking a decision for appointment of a suitable person as a Member of the Commission. The file was then

placed before the Hon'ble Chief Minister who made the following observation:

***“Smt. Meera Walia may be appointed as a Member of the HPPSC as a women and an educationist.”***

5. Thereafter the matter was placed before His Excellency, the Governor of Himachal Pradesh and Smt. Meera Walia- respondent No. 3 was appointed as Member of the Commission. It is stated that no other person than respondent No. 3 was considered for appointment as Member of the Commission and no inquiry with respect to her integrity, honesty, credibility or qualities was ever undertaken. The decision to appoint respondent No.3 as Member was taken only by Hon'ble Chief Minister and not by State Government and no deliberative process was ever undertaken by the State Government for such appointment. It is further stated that one FIR No. 6 of 2008 dated 22.5.2008 was registered against respondent No. 3 and her husband Sh. Subhash Ahluwalia in State Vigilance and Anti-Corruption Bureau, Police Station Shimla, under Section 13 (1) (e) and 13 (2) of Prevention of Corruption Act, 1988 and a challan under Section 173 of Cr.PC

was filed before the Special Judge (Forests), Shimla. However, Shri Subhash Ahluwalia, husband of respondent No. 3 who happened to be the Principal Private Secretary to Hon'ble the then Chief Minister, could not be charge-sheeted for want of prosecution sanction from the Government of India.

6. The gist of the charge-sheet was that respondent No. 3 and her husband have accumulated wealth disproportionate to their known sources of income. The children of respondent No. 3 are stated to be studying abroad and they have also purchased an orchard by way of *benami* transaction. It is stated that respondent No.3 and her husband are frequently visiting abroad by spending huge money but the source of money has not been disclosed. The said case remained pending from the year 2008 for one reason or the other but on 25.12.2012, the Congress Government was sworn-in in the State of Himachal Pradesh and on 26.12.2012, the statement was made by the learned counsel for the accused that the State wanted to file another report in this case. Thereafter a supplementary report was filed in the Court below on 1.7.2013 which stated that no case of

disproportionate assets was made out against the accused-respondent No. 3 herein and she was discharged vide order dated 9.9.2014.

7. It is contended that respondent No. 1-State while appointing respondent No. 3 as a Member of Commission has not taken into consideration the mandate of Article 316 of the Constitution. Therefore, the faith of a common man is shattered when the persons against whom some serious allegations are leveled, are appointed. It has also been averred that the deliberative process has not been done in the present case for appointment of respondent No. 3 as a Member, which means that thorough discussion preceded by an inquiry in the antecedents, credibility, honesty of the candidate(s) and other requirements as laid down by the Hon'ble Supreme Court has not been done.

8. On these grounds, learned Senior Counsel for the petitioner prays that the appointment of respondent No. 3 may be quashed and set aside. It is further prayed that in view of the directions issued by the Hon'ble Supreme Court, the State

may be directed to frame guidelines or parameters for appointment of Chairman and Members of the Commission.

9. Respondent No. 2-Commission has filed statement/reply and stated that the respondent-Commission has no role in the appointment of Member of the Commission.

10. Respondent No. 1 has filed the detailed reply and it is stated that the appointments of Chairman and other Members of the Commission are made under the provisions of Article 316 (1) of the Constitution of India with the approval of His Excellency the Governor of Himachal Pradesh which provides that the Chairman and other Members of a State Commission shall be appointed by the Governor of the State, provided that as nearly as may be one half of the Members shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Govt. of India or under the Government of a State. It is further stated that respondent No. 3-Ms. Meera Walia, prior to her appointment as Member in the Commission was serving as Member, Himachal Pradesh Private Educational Institutions Regulatory Commission, which is a statutory body

and her suitability and integrity was not disputed even by the present petitioner while holding the said position by her at that relevant point of time. It is stated that she also remained as Principal, Rajkiya Kanya Mahavidyalaya (RKMV) Shimla and Director/Principal, State Council of Education Research and Training (SCERT) Solan and meets the requirements prescribed under Article 316 (1) of the Constitution. It is stated that the petitioner himself has admitted that the Special Judge (Forests) Shimla has discharged respondent No. 3 and he has also not questioned the supplementary report or discharge order by the Special Judge, as such, the averments with regard to serious charges/allegations under the provisions of Prevention and Corruption Act against the private respondent are not maintainable.

11. The contesting respondent No. 3 has also filed her reply and has taken a preliminary ground of maintainability of the writ petition and has disputed the motive of the petitioner. It is stated that the petitioner had singled out respondent No. 3 by challenging her appointment without challenging the appointment of other persons, who were appointed as



Chairman and Members by adopting the same procedure.

Respondent No. 3 in her reply has mentioned the names of Chairman and Members appointed w.e.f. 2013 to 2017 in para 1 of the preliminary submissions by following the same procedure by which respondent No. 3 has been appointed. It is stated that no statutory criteria or parameters have either been laid down or prescribed for appointment as Chairman or Member of the Commission, therefore, in absence of such criteria or parameters, the writ of *quo warranto* is not maintainable.

12. It is further submitted that respondent No. 3 has been appointed as Member keeping in view the institutional requirements and the mandate of the Constitution of India and also keeping in view the excellent academic career of respondent No. 3. In respect of charge sheet, it is stated that respondent No. 3 was discharged by the Special Judge, (Forests), Shimla which was not challenged by anybody and against Sh. Subhash Ahluwalia, prosecution sanction could not be obtained due to refusal by the Government of India.

Therefore, the learned Senior Counsel for respondent No. 3 prays for dismissal of the writ petition.

13. The petitioner by filing the rejoinder has refuted the averments made in the reply filed by the respondents and reiterated the averments contained in the writ petition.

14. We have heard the learned counsel for the parties and have carefully gone through the record.

15. The first ground taken by the respondent is about the maintainability of the writ petition. It is stated that the petitioner cannot maintain the writ petition as he is a third party. On consideration of the ground so taken on maintainability, this Court vide order dated 22.8.2017 has rejected the prayer made by respondent No. 3 on maintainability. Therefore, we proceed further to examine the case of the parties on other perspective also.

16. The contention of the petitioner is that he is a law student and he read about the appointment of respondent No. 3 in the news papers and social media. It is also stated that the appointment of respondent No. 3 is contrary to the Constitutional provisions and also the

judgments rendered by the Hon'ble Supreme Court of India.

He thereafter filed application under the Right to Information Act, 2005 and collected the information regarding appointment of respondent No.3. It has to be noticed here that petitioner was having full knowledge of appointment of respondent No.3, still he has not stated as to how he had acquired the documents pertaining to registration of a criminal case against respondent No. 3. He has produced the copy of FIR running about 50-60 pages but it is not forthcoming in the petition as to how he got the said papers. Therefore, it is presumed that the petitioner has not come to the Court with clean hands and has suppressed the material facts with further presumption that the petitioner has been made to use by some interested persons against respondent No. 3.

17. The law requires that a person should come to the Court with clean hands, clean soul and clean mind. The legal maxim *suppressio veri expressio falsi* means the suppression of the truth is equivalent to an expression of falsehood. It is further stated that respondent No. 3 while filing reply stated that the petitioner has singled out respondent No. 3 only

without challenging the appointments of Chairman and other Members of the Commission, but, it is not forthcoming as to why petitioner has done so.

18. The petitioner has also extracted the provisions of Articles 316 and 317 of the Constitution of India which show that the petitioner is/was aware about the procedure to be adopted by the Constitutional Machinery and also aware of the judgments rendered by the Hon'ble Supreme Court on the point. Still he has challenged the appointment of respondent No. 3 which shows that he is having ill will against respondent No. 3 or has been used by some interested person against respondent No.3.

19. Filing a petition in public interest, though, is permissible in view of the judgments of the Hon'ble Supreme Court of India but the same shall not be used for fulfilling ill motive and for different purpose.

20. The Hon'ble Supreme Court in ***B. Krishna Bhat vs. Union of India (1990) 3 SCC 65*** in para 5 held that Article 32 of the Indian Constitution is not the nest for all the bees in the bonnet of 'public spirited persons'.

21 In service jurisprudence, it is settled law that it is for the aggrieved person, i.e., non-appointee, to assail the legality of the offending action. Third party has no *locus standi* to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person by issuance of a writ of *quo warranto*. Therefore, assuming the appointment of the Chairperson or a Member of a Commission as a “service matter”, a third party or a complete stranger such as, the writ petitioner, cannot approach the Tribunal or High Court to challenge the appointment of respondent No. 3. The Hon’ble Supreme Court in ***State of Punjab vs. Salil Sabhlok and others*** (2013) 5 SCC 1 in para 88 held as under:

“88. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of *quo warranto*. However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not fall in the category of a service matter. Therefore, a PIL for a writ of *quo warranto* in respect of an appointment to a constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above.”

22. The petitioner himself has stated that the appointment of respondent No. 3 is under Article 316 of the Constitution of India. It is apt to reproduce Article 316 of the Constitution of India herein.

**"316. Appointment and term of office of members.-**

*(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State: Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.*

*(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the*

*Governor of the State in the case of a State Commission, may appoint for the purpose.*

*(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier:*

*Provided that -*

*(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;*

*(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.*

*(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office."*

23.

A bare reading of Article 316 of the Constitution would show that it confers power on the Governor of the State to appoint the Chairman and other Members of a Commission. Under Article 316 of the Constitution, the Governor of a State has not only the express power of appointing the Chairman and other Members of Commission but also the implied powers

to lay down the procedure for appointment of Chairman and Members of the Commission and the High Court cannot, under Article 226 of the Constitution, usurp this constitutional power of the Government and lay down the procedure for appointment of the Chairman and other Members of the Commission.

24. The security of tenure is confirmed by the provision for removal of the Chairperson of the Commission from office, as provided for, in Article 317 of the Constitution.

This reads as follows:

***"317. Removal and suspension of a member of a Public***

***Service Commission.***-(1) *Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.*

*(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause*



(1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,- (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour."

25.

In case titled as ***Ashok Kumar Yadav and others vs. State of Haryana and others (1985) 4 SCC 417***, the Hon'ble Supreme Court has held as under:

"8.....It was nowhere alleged in any of these writ petitions that the Chairman and members of the Haryana Public Service Commission were lacking in integrity, calibre and qualification or that they were appointed on the Haryana Public Service Commission purely on account of

caste considerations or political affiliations without any merit or competence.....the petitioners in this writ petition proceeded to point out the relationship of the Chairman and members of the Haryana Public Service Commission to one or the other member of the political party ruling the State at the date of the respective appointments and sought to draw an inference from such relationship that their appointments were on account of caste considerations and political linkages and merit, competence and integrity were sacrificed. The relationship alleged in paragraph 9 was not disputed on behalf of the respondents but the inference sought to be drawn therefrom was stoutly resisted and it was contended that there was no material at all on the basis of which it could be said that the Chairman and members of the Haryana Public Service Commission were appointed solely "due to political and caste considerations" without taking into account calibre, competence or integrity.....It is a very serious matter to cast aspersions on the character, integrity and competence of men occupying the high office of Chairman and members of a Public Service Commission and we wish the Division Bench of the High Court had acted with care and circumspection in making such imputation against the Chairman and members of the Haryana Public Service Commission, when it was not even specifically alleged in paragraph 9 of Civil Writ Petition 3344 of 1983 that the Chairman and members of the Haryana Public Service Commission were unfit to hold the office to which they were appointed or were lacking in integrity, character and qualification. We may point out that even if the Chairman and members of the Haryana Public Service

*Commission were appointed on account of political and caste considerations, they could still be men of character, integrity and competence and the extraneous considerations which might have weighed with the appointing authority need not necessarily reflect upon their competence, character or fitness.*

*9.....It was a totally irrelevant inquiry, because even if they were men lacking in integrity, calibre and qualification, it would not make their appointments invalid, so long as the constitutional and legal requirements in regard to appointment were fulfilled. Article 316 of the Constitution makes provision for appointment and term of office of members of a State Public Service Commission. Clause (1) of this Article provides that the Chairman and members of a State Public Service Commission shall be appointed by the Governor of the State and the proviso to that clause enacts that "as nearly as may be one half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years" under the Government of a State. Clause (2) of Article 316 declares that a member of a State Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier. Article 319 lays down inter alia that on ceasing to hold office, the Chairman of a State Public Service Commission shall not be eligible for any employment under the Government of India or the Government of a State, save and except that of Chairman or any other member of the Union Public Service Commission and similarly, a member*

*of a State Public Service Commission. These are the only provisions in the Constitution bearing on the appointment of Chairman and members of a State Public Service Commission. Now concededly, none of these constitutional provisions was violated in making appointments of the Chairman and members of the Haryana Public Service Commission nor was any legal provision breached and the appointments of the Chairman and members of the Haryana Public Service Commission were made in conformity with the constitutional and legal requirements.*

26. It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of persons who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must, therefore, be made strictly on merits, keeping in view various factors which go to make a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Commission are eminent person possessing a high degree of calibre, competence and integrity, who would

inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them.

27. The functions of the Executive in a democratic Country are to be done at various levels by various persons. In respect of State, the Chairman/Member(s) of the Commission is/are to be appointed by the Governor of the State on the recommendation of the Chief Minister/Government and in respect of Union, by the President. Therefore, it is to be presumed that the constitutional appointments have been made by the President and the Governors by following the proper constitutional procedure. Thus, once the appointment is over, it is to be presumed that the authorities have examined and found that the persons appointed as Members/Chairman is/are fit to be appointed as such.

28. The Hon'ble Supreme Court in ***In R/o Dr. Ram Ashray Yadav Chairman, Bihar Public Service Commission, Special Reference No. 1 of 1997*** in para 34 has held as under:

*“34.The credibility of the institution of Public Service Commission is founded upon faith of the common man on*

*its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts.”*

29. The Hon'ble Supreme Court in **Ashok Kumar**

**Yadav** case *supra* in para 30 has further held as under:

*“30. Before we part with this judgment we would like to point out that the Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission. It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them. We would therefore like to strongly impress upon*

*every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merits. Whilst making these observations we would like to make it clear that we do not for a moment wish to suggest that the Chairman and members of the Haryana Public Service Commission in the present case were lacking in calibre, competence or integrity.”*

30. In ***Salil Sabhlok*** case supra, the Hon'ble Supreme Court in para 45 has held that even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Commissions enumerated in Article 320 of the Constitution. It would be profitable to refer to paras 45 and 46 of the judgment supra, herein:

*“45.I have already held that it is for the Governor who is the appointing authority under Article 316 of the Constitution to*

*lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State. Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State, on disciplinary matters affecting a person serving under the Government of a State in a civil capacity, on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding, on claims for award of pension in respect of injuries sustained by a person while serving*



*under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration.*

*“46.....Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To quote De Smith’s Judicial Review, Sixth Edition:*

*“If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised. (Page 280)*

*If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a licence, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent (Page 282)”*

31. Article 226 of the Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any government within those territories, directions, orders or writs, including writs in the nature of

habeas corpus, mandamus, prohibition, *quo warranto* etc. It is apt to reproduce paras 50 and 52 of the judgment rendered in ***Salil Sabhlok*** case supra herein:

*“50. I have already held that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute and the Constitution and the statutory or the constitutional authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only writ of quo warranto but to other directions, orders or writs.*

*51.....*

*52. Therefore, I hold that the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extraordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution.”*

32. It is true that no parameters or guidelines have been laid down in Article 316 of the Constitution for selecting the Chairperson of the Commission and no law has been

enacted on the subject with reference to Entry 41 of List II of the 7<sup>th</sup> Schedule of the Constitution. It is equally true that the State Government and the Governor have a wide discretion in the procedure to be followed.

33. In the present case, the appointment of respondent No.3 has been made by adopting and following the due procedure as mandated by the Constitution of India. In the FIR on the allegations of corruption registered against respondent No. 3, she has been discharged by the Special Judge. There is no challenge to the said order of the Special Judge. It appears that the petitioner has been used by some person to file petition against respondent No. 3 to challenge her appointment. The petitioner has also not been able to establish from where he collected the judicial papers/records in respect of respondent No. 3 and the copies of papers whereby she has been discharged. Thus, it is held that the petitioner has not come to the Court with clean hands, clean soul and clean mind. We are inclined to impose cost on the petitioner for filing such petition, but the petitioner being a law student and law abiding citizen, we refrain from doing so.

34. We hope and trust that the State of Himachal Pradesh must step in and take urgent steps to frame memorandum of procedure, administrative guidelines and parameters for the selection and appointment of the Chairperson and Members of the Commission, so that the possibility of arbitrary appointments is eliminated.

35. As a corollary, the writ petition fails and is accordingly dismissed alongwith pending applications, if any.

**(L. Narayana Swamy)**  
**Chief Justice**

**(Jyotsna Rewal Dua)**  
**Judge**

**January 1, 2020.**

*(cm Thakur )*